

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

TREASURE CHEST THEMED VALUE MAIL,  
INC.,

Plaintiff,

-against-

DAVID MORRIS INTERNATIONAL, INC.,

Defendant.

Civil Action No. 1:17-cv-01-NRB

**AFFIDAVIT IN LIEU OF  
DIRECT EXAMINATION**

STATE OF NEW YORK )

ss.:

COUNTY OF NEW YORK )

Richard Shane, being duly sworn, deposes and says:

1. I am the founder and chief executive officer of Treasure Chest Themed Value Mail, Inc. ("Treasure Chest"), and as such, I am fully familiar with the facts and circumstances set forth herein, based upon my own personal knowledge and a review of the records maintained by my office.

2. I make this affidavit in lieu of direct testimony at trial of this action.

3. Treasure Chest is an advertising company that primarily employs direct mailing and digital media to deliver advertising materials to consumers.

4. Treasure Chest maintains a proprietary database comprised of the names and addresses of individuals in the United States who have expressed interest in vacation travel by requesting travel-related information directly from Treasure Chest and/or travel-related periodicals (the "Database").

5. During the Spring 2016 season, the Database contained the contact information of over 1.4 million individuals that expressed interest in receiving travel-related information.

6. On or about October 19, 2015, David Morris contacted me to discuss engaging Treasure Chest to advertise A-Rosa Cruises on behalf of David Morris International, Inc. ("Defendant").

7. Defendant ultimately engaged Treasure Chest to advertise both A-Rosa Cruises and AutoEurope. The specific terms agreed upon by the parties is memorialized in the Vacation Travel

Mailing Participation Agreement dated January 25, 2016 and executed by David Morris on behalf of the Defendant (the “Contract”). A true copy of the Contract is annexed hereto as **Exhibit A**.

8. In or about February 2016, Defendant provided its advertising materials to Treasure Chest for inclusion in the mailing campaign, a double-sided flier measuring approximately 5”x 8” and depicting an advertisement for AutoEurope on one side and one for A-Rosa Cruises on the other (“Defendant’s Insert”). A true copy of Defendant’s Insert is annexed hereto as **Exhibit B**.

9. Pursuant to the terms of the Contract, Treasure Chest was required to: (a) mail Defendant’s Insert to at least 730,000 vacation travelers in the United States along with a response card bearing the logos of the A-Rosa Cruises and Auto Euope; and (b) provide more than 300,000 weekly follow-up digital impressions for two different products (see Exhibit A at § 1).

10. Treasure Chest created a response card bearing the logos of both companies on Defendant’s Insert for inclusion in the Spring 2016 mailing campaign. A true copy of the response card utilized in the 2016 mailing campaign is annexed hereto as **Exhibit C**.

11. On or about March 28, 2016, Treasure Chest mailed Defendant’s Insert with the response card, along with the advertisements of its other clients, to 1,453,000 individuals, almost double what was promised. A copy of the related mailing receipt from the United States Postal Service is annexed hereto as **Exhibit D**.

12. Treasure Chest published all of the additional materials provided to it by Defendant in Treasure Chest’s weekly electronic newsletters and posted same on its social media pages. Although the Contract only provided for publishing digital impressions for two products, Treasure Chest published digital impressions for four products: A-Rosa Cruises, AutoEurope, Silver Sea Cruises and Ama Waterways. A sample of the digital impressions delivered on Defendant’s behalf are annexed hereto as **Exhibit E**.

13. Treasure Chest has a substantial social media presence. During the relevant period in 2016, Treasure Chest had 300,000 followers on Facebook alone, plus over 39000 followers on Twitter, and over 10,000 followers on Instagram.

14. Treasure Chest guaranteed that Defendant would receive greater than 3,000 leads, or Defendant would be allow Defendant to participate in the next season's mailing campaign free of charge (see Exhibit A at § 3).

15. Treasure Chest sent weekly status updates to Defendant concerning the consumer leads. As of June 21, 2016, Defendant received 6,118.00 leads in total, 3,441 for A-Rosa Cruises and 2,677 for AutoEurope. A copy of the June 22, 2016 status update is annexed hereto as **Exhibit F**.

16. Treasure Chest routinely participates in "matchbacks"<sup>1</sup> with participating advertisers. This allows both parties to confirm which bookings are directly attributable to Treasure Chest's mailing campaign.

17. In January 2017, I engaged an independent third party company to perform a matchback for MSC Cruises to quantify bookings directly attributable to their participation in the Spring 2016 campaign. I provided Treasure Chest's Database and MSC Cruises provided their booking records directly to the company. The resulting report indicated that almost 3000 bookings were directly attributable to Treasure Chest. A copy of the MSC Matchback Summary Report dated January 8, 2017 is annexed hereto as **Exhibit G**.

18. In exchange for participation in Treasure Chest's advertising campaign, Defendant agreed to (a) pay \$45,000 to Treasure Chest on or before July 1, 2016; (b) provide up to \$40,000 in airfaire and hotel accommodations to Treasure Chest at fair market value; and (c) provide up to \$10,000 in A-Rosa cruises to Treasure Chest (see Exhibit A at § 3).

19. Defendant has failed to perform all of its obligations under the Contract. Defendant failed to pay \$45,000 to Treasure Chest, provide any A-Rosa cruises, or to honor Treasure Chest's requests for hotel accommodations beyond an accumulation of \$13,000.

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<sup>1</sup> A matchback is an industry standard practice used by companies to calculate their return on investment relating to advertising. The bookings/sales that a company receives after an advertising campaign are compared to the contact information in Treasure Chest's database. Matching information indicates that the booking resulted from the mailing campaign.

20. Only after entering into contract with Defendant, did I learn that David Morris has a reputation in the travel community for not paying creditors. When I spoke to others in the industry of the new business dealing with Defendant, I was met with responses along the lines of “I hope you get paid.”

21. As a result of Defendant’s failure to perform its obligations under the Contract, Treasure Chest has been damaged in an amount not less than \$82,000.00.

22. It is my understanding that Defendant contends that it is not liable for payment due to Treasure Chest under the Contract, because it claims not to have received any bookings as a result of its participation in Treasure Chest’s mailing campaign.

23. Treasure Chest did not guarantee to the Defendant that any consumers would purchase the products advertised by Defendant as a result of its participation in the campaign (see Exhibit A).

24. Nonetheless, on multiple occasions before and after the commencement of this litigation, I offered to have a double-blind matchback performed for Defendant, whereby we would both submit our information to a third party, to confirm whether any consumers made purchases from A-Rosa Cruises or AutoEurope after receiving Treasure Chest’s mailing. Each time, the Defendant refused.

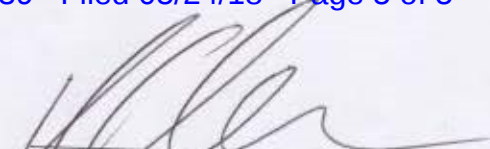
25. Without a matchback, it is impossible to know whether A-Rosa Cruises or AutoEurope received bookings attributable to Treasure Chest.

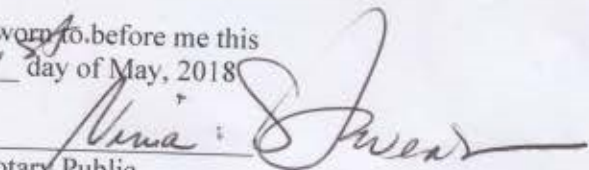
26. The Contract provides that Treasure Chest is entitled to 1.5% finance fee for unpaid amounts, accordingly Treasure Chest is entitled to 1.5% per month commencing in August 1, 2016.

27. The Contract also provides that Defendant is also liable for costs necessary to collect any past due balance, accordingly Treasure Chest is entitled to collect from Defendant all costs incurred by Defendant during this litigation, including attorney’s fees.

**WHEREFORE**, Treasure Chest Themed Value Mail, Inc. seeks judgment against David Morris International, Inc. for compensatory damages of \$82,000.00, interest at a rate of 1.5% per month beginning in August 1, 2016, attorney’s fees, costs of this action, and such other and further relief as this Court may deem just and proper.

Sworn to before me this  
21 day of May, 2018

  
Richard Shane

  
Notary Public

